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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,195	01/23/2006	Heinz Gutknecht	U 015818-8	2313
140	7590	09/13/2010	EXAMINER	
LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023			KNABLE, GEOFFREY L	
			ART UNIT	PAPER NUMBER
			1791	
			NOTIFICATION DATE	DELIVERY MODE
			09/13/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

Office Action Summary	Application No. 10/540,195	Applicant(s) GUTKNECHT, HEINZ	
	Examiner Geoffrey L. Knable	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,17-22 and 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,17-22 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, line 2 as amended, the antecedent for “the distance” is indefinite as there are two different distances defined in claim 1.

3. Claims 1, 3-12, 20-22 and 41 are rejected under 35 U.S.C. 103(a) as obvious over Suda et al. (US 6,613,177) taken in view of at least one of [EP 619170 to Malin et al., JP 8-127083 to Yoshioka and JP 2000-159399 to Suda].

These references are applied for substantially the same reasons as set forth in the last office action. As to the new language in claim 1 referencing that the control device is adapted for adjustably moving the support surface of the transport device to adjust a band distance between bands, it is emphasized that Suda et al. teach that the movement of the transport device is controlled in such a manner that the distance between adjacent bands (e.g. “d” in fig. 7) will be adjusted - e.g. note col. 3, lines 23-30, 46-53; col. 7 and cols. 9-10. Although the illustrated example also includes a small margin rubber “1b” in the strips, distance “d” is still a band distance between adjacent bands consistent with the claims, it being also emphasized that the present claims are directed to *the device*, this margin rubber being part of the material worked upon by the device and thus not resulting in a materially different device in this regard. Further, in any event, it is also noted that Suda et al. even contemplate that the margin rubber can

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be omitted leaving only the space "d" - note esp. col. 7, lines 38-41. It is therefore still submitted that a device as claimed would have been obvious. As to new claim 41, Suda et al. teaches providing a splicer that would butt splice adjacent bands consistent with the claim, this including the case where there is initially a space with no margin rubber - note esp. col. 7, lines 34-41.

4. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suda et al. (US 6,613,177) taken in view of at least one of [EP 619170 to Malin et al., JP 8-127083 to Yoshioka and JP 2000-159399 to Suda] as applied above, and further in view of Hirano et al. (US 4,474,338) as applied in the last office action.

5. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suda et al. (US 6,613,177) taken in view of at least one of [EP 619170 to Malin et al., JP 8-127083 to Yoshioka and JP 2000-159399 to Suda] as applied above, and further in view of Mancini et al. (US 2002/0062908) as applied in the last office action.

6. Applicant's arguments filed 7/6/2010 have been fully considered but they are not persuasive as regards the prior art rejections.

The previous 112 rejections have however been withdrawn in view of applicant's response.

With respect to the prior art rejections, applicant stresses that according to the invention, "because the bands are positioned without abutting or overlapping (i.e. at a band distance), there is more room for adjustment of the band distance during manufacture," this being in contrast to the cited references which "are directed to devices in which the bands are joined in an overlapping fashion (i.e. not spaced from

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one another at a distance as required by the claimed invention)” (emphasis in original). Specifics of the cited references are also pointed to in support of this argument.

These arguments have been carefully considered but are unpersuasive. First, it should be noted that it is not clear that in the invention “the bands are positioned without abutting” as argued - note especially page 6, lines 30-31 which suggests that “[i]n an ideal case the bands will exactly abut each other”. This is directly analogous to the fig. 9 instance described by Suda et al. Secondly, only allowing adjustment of a spacing of the bands does not seem to make “more room for adjustment” but rather actually reduces the amount of adjustment possible since overlap is not provided/allowed for. In other words, Suda et al. suggests a process/device in which the adjustments can include anywhere from overlapping a defined amount to essentially being spaced a defined amount (d). This added adjustment capability of the Suda et al. system does not however materially distinguish the claimed device from that of Suda et al. While the illustrated example of Suda et al. also includes a small margin rubber “1b” in the strips, distance “d” is still a band distance between adjacent bands consistent with the claims. It is also emphasized that the present claims are directed to the *device*, this margin rubber being part of the *material worked upon* by the device and does not result in a materially different device in this regard. Further, in any event, even if the claims were read to define over the presence of a margin rubber as part of the strip being processed, as set forth in the statement of rejection, Suda et al. even contemplates that the margin rubber can be omitted leaving only the space “d” - note esp. col. 7, lines 38-41. In such case, contrary to applicant’s arguments, there would be no overlapping.

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With respect to the secondary references, they were cited not for the basic processing but rather as additional evidence of the well known desire to control the joint between adjacent strips such that a cord center-to-center distance is controlled to be within limits. Thus, again, to take the cord center-to-center distance in the strip and/or at the joint into account in assessing the appropriate and desired relationship between the adjacent strips would have been obvious and lead to only the expected and predictable results.

The argument that the prior art would only describe precalculating in a constant and repetitive movement as opposed to adjustment during production are noted but it is not seen what in claim 1 distinguishes the claimed device from what would be suggested by the prior art. Note also for example in view of page 21, lines 13-15 of the specification, it appears that the invention contemplates a similar adjustment scheme to that of Suda et al. where an adjusted distance between bands in the ply can be repeated for all bands to thereby lengthen the overall ply - compare col. 7, lines 14-41 of Suda et al. On a related note, it is also again pointed out that an overall measuring unit during ply formation would have been obvious for the reasons advanced in the previous office action with respect to claims 5-6.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey L. Knable whose telephone number is 571-272-1220. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Geoffrey L. Knable/
Primary Examiner, Art Unit 1791

G. Knable
September 7, 2010